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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5300 OF 2005

Sau. Kamini Anup Taksale ... Petitioner

Vs.

Anup Manik Taksale ... Respondent

Mr. R.P. Mudholkar for the petitioner.

Ms. Lata B. Patne for the respondent.

CORAM: SMT. RANJANA DESAI, J.

DATED: 6TH SEPTEMBER, 2005.

P.C.:-

1. Rule. By consent of the parties, taken up for final hearing.

2. The petitioner is the respondent in Hindu Marriage Petition No.50 of 2005 pending in the court of Civil Judge, Senior Division, Nashik. By the impugned order dated 7/4/2005, the petitioner 's amendment application is rejected by the trial court and, hence, this writ petition.

3. I have heard, at considerable length, the learned counsel for the petitioner. He contended that the trial court erred in rejecting the amendment application. He submitted that the amendment is not likely to change the nature of the petition. No new cause of action is sought to be introduced. He submitted that it was, therefore,

wrong on the part of the trial court to reject the amendment application.

4. The learned counsel for the respondent, on the other hand, submitted that the trial of the petition has already begun. The petitioner has not been able to establish that in spite of due diligence, the petitioner could not raise these facts, which are sought to be introduced by way of amendment, before the commencement of the trial and, therefore, no interference is necessary with the impugned order.

5. Having gone through the amendment application, I am of the opinion that the amendment application merely seeks to introduce certain additional facts. Nothing is tried to be introduced, which is diametrically opposed to the facts stated in the written statement. It is stated that due to inadvertence these facts were not agitated in the written statement. Considering the fact that the matter pertains to maintenance of a woman and the fact that the custody of the child is with the petitioner, in my opinion, interest of justice require that for proper adjudication of the issues involved, written statement needs to be amended. However, the petitioner will have to pay costs quantified at Rs.500/- to the respondent. Payment of costs will be condition precedent to the acceptance of amendment by the trial court. The costs shall be deposited in the trial court within a period of six weeks from today. On such deposit being made, the

respondent will be at liberty to withdraw the same without security. It is pointed out to me that there are some minor errors in the proposed amendment. The petitioner shall take leave of the trial court and rectify the errors immediately. I am informed that the High Court has made the said petition time bound. The trial court was supposed to dispose of the petition by 31/8/2005. In the circumstances of the case, in my opinion, the time limit set by the High Court needs to be extended if it is not already extended. Hence, if the time limit is not already extended, the trial court is directed to hear and dispose of the petition on or before 15/10/2005. Parties are expected to co-operate and not ask for any unnecessary adjournments.

6. Writ petition is disposed of in the aforestated terms.

7. Rule made absolute.

(SMT. RANJANA DESAI, J.)